(TCN), Peru (BellSouth Peru), United Kingdom (BellSouth UK), Uruguay (Abiatar), and Venezuela (Telcel).

Countries with Cingular-controlled affiliates post-consummation: Antigua and Barbuda (AWVL); Barbados (CCB), Bermuda (Telecom Bermuda), Cayman Islands (WVCIL); Curaçao, Netherlands Antilles (CSC), Dominica (WVDL); French West Indies islands of Guadeloupe, Martinique, Saint-Barthélémy, and Saint-Martin (ODFWI); Grenada (GWHL), Jamaica (WVJL), Saint Lucia (WVSTL), and Saint Vincent and the Grenadines (WVSVG)

(k)-(m) Destination Country, Showing of Non-Dominance/Regulatory Classifications:

Cingular is eligible for non-dominant treatment on all routes except the U.S - Belgium, U S -Denmark, and U S -South Africa routes Cingular notes that it is not subject to dominant carrier obligations on the U.S -Belgium, U S.-Denmark, and U S - South Africa routes to the extent that it serves those routes by reselling the international switched services of unaffiliated U S facilities-based carriers.[9]

AWS is presently authorized to provide global facilities-based services, and it provides facilities-based service on certain U S.-Caribbean and U S -mid-Atlantic routes Following the consummation of the transaction, Cingular will not provide facilities-based service to Belgium, Denmark, or South Africa with these facilities acquired from AWS. Accordingly, the parties have requested that the Commission only transfer a limited portion of AWS's facilities-based authority to Cingular covering certain routes, not including the U S -Belgium, U S -Denmark, and U S -South Africa routes [10] AWS will relinquish any residual authority not transferred to Cingular (*i.e.*, facilities-based authority on the U S -Belgium, U S -Denmark, and U S -South Africa routes) as of the consummation of the transaction

[9] *See* 47 C F R §§ 63 10(a)(4), 43 61(c)

[10] *See supra* at 1

Reasons Supporting Non-Dominant Treatment

1 The Commission has already determined that these affiliates lack market power in their respective destination markets·

Affiliations through SBC. Austria (Belgacom Austria), Canada (SBCS), Czech Republic (Contactel), Germany (Belgacom Deutschland and Talkline), Greece (Belgacom), Hong Kong, China (Belgacom China), Hungary (HTCC), Italy (Belgacom Italia), Japan (Belgacom Japan), Lithuania (Bité), Netherlands (Belgacom Nederland), Portugal (Belgacom Portugal), Singapore (Belgacom Asia), Spain (Belgacom Spain SL), Sweden (Belgacom Sweden), Switzerland (TDC Switzerland and Belgacom Schweiz), and United Kingdom (Belgacom U.K.) [11]

Affiliations through BellSouth Argentina (Movicom BellSouth), Chile (BellSouth Chile and BellSouth Comunicaciones), Colombia (BellSouth Colombia), Ecuador (Otecel), Guatemala (BellSouth Guatemala), Israel (CellCom), Nicaragua (TCN), Panama (BSC de Panama), Peru (BellSouth Peru), United Kingdom (BellSouth UK), Uruguay (Abiatar), and Venezuela (Telcel) [12]

Affiliations through AWS Antigua and Barbuda (AWVL); Barbados (CCB); Bermuda (Telecom Bermuda); Canada (Rogers Wireless); Cayman Islands (WVCIL), Curaçao, Netherlands Antilles (CSC),

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[11] *Applications of Ameritech Corp., Transferor, and SBC Comms , Inc., Transferee,* CC Docket 98-141, *Memorandum Opinion and Order,* 14 F C C R 14712, 14933-34 (1999), *SBCS Texas Int'l 214 Order,* 15 F.C.C R at 11725-26, *Applications of SBC Comms Inc. and BellSouth Corp , Memorandum Opinion and Order,* 15 F C C R 25459, 25474-79 (2000) ("*SBC/BellSouth Order*"), *International Bureau Policy Division Grants Southwestern Bell Communications Services, Inc. Section 214 Authority for Michigan and Conditional Authority for Indiana, Illinois, Ohio and Wisconsin,* FCC File No ITC-214-20030123-00026, *Public Notice,* DA 03-2938 (rel Sept. 24, 2003), *International Bureau Policy Division Grants SBC Communications International 214 Authority for California and Conditional Authority for Nevada,* FCC File No ITC-214-20020923-00452, *Public Notice,* DA 02-3544 (rel. Dec 20, 2002); *see also Public Notice,* Report No FCN-00069, DA 02-2471, FCC File No FCN-NEW-20020803-00033 (rel Oct. 1, 2002), *Public Notice,* Report No FCN-00063, DA 02-751, FCC File No FCN-NEW-20020308-00018 (rel Apr 3, 2002), *Public Notice,* Report No. FCN-00060, DA 01-2936, FCC File No FCN-NEW-20011129-00062 (rel Dec. 20, 2001); *Public Notice,* Report No FCN-00058, DA 01-2728, FCC File No FCN-NEW-20011106-00057 (rel. Nov 21, 2001), *Public Notice,* Report No FCN-00057, DA 01-2558, FCC File No FCN-NEW-20011016-00049 (rel Nov 1, 2001) AWS's foreign carrier affiliations notification for ODFWI and WVJL—new entrants in their respective mobile markets of the French West Indies and of Jamaica, and ones which are not yet providing any service—are still pending before the Commission *See* FCC File No FCN-NEW-20040223-00002 (notifying the Commission with respect to ODFWI) (The Commission has not yet assigned a file number for the Jamaica notification) Nevertheless, AWS has made the required showings in its foreign carrier affiliation notifications that ODFWI and WVJL lack market power in their respective markets of the French West Indies and of Jamaica *See* 47 C F.R §§ 63 10, 63 11(b)(1)(ii), 63 11(b)(2)(i), (e)(9), (f)

[12] *See SBC/BellSouth Order,* 15 F C C R at 25474-79, *see also Public Notice,* Report No FCN-00060, DA 01-2936, FCC File No FCN-NEW-20011129-00062 (rel Dec 20, 2001)

Dominica (WVDL), Grenada (GWHL), India (BPL Cellular and IDEA); Saint Lucia (WVSTL); and Saint Vincent and the Grenadines (WVSVG).[13]

2. All of the above foreign carriers and the foreign carrier affiliates in France (Belgacom Présence and Belgacom), Luxembourg (Belgacom), and Canada (Belgacom), qualify for a presumption of non-dominance in their respective markets under Section 63 10(a)(3), *i.e.*, each foreign affiliate has less than 50-percent market share in the international transport and the local access markets on the foreign end of the route. The foreign carrier affiliations in Jamaica (WVJL), and the French West Indies islands of Guadeloupe, Martinique, Saint-Barthélémy, and Saint-Martin (ODFWI) qualify for this presumption as well

3 Cingular's affiliated foreign carriers in Belgium (Belgacom),[14] Denmark (TDC A/S), and South Africa (Telkom S A), have not been declared non-dominant. Cingular provides service on those routes solely by reselling the international switched services of unaffiliated U S. facilities-based carriers, and notes that it is not subject to dominant carrier obligations on those routes to the extent that it does so [15] Cingular certifies that it will comply with the Commission's dominant carrier regulations (including the requirements of Sections 63.10 and 43.61(c) of the Commission's rules) with respect to its provision of services along the U.S.-Belgium, U S.-Denmark, and U S.-South Africa routes to the extent it serves these routes in the future through facilities-based services or by reselling the international switched services of affiliated U S facilities-based carriers, without prejudice to its rights to petition for reclassification at a later date [16]

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[13] *See Public Notice*, Report No FCN-00084, DA 03-3818, FCC File No. FCN-NEW-20031113-00021 (rel Nov 26, 2003); *Public Notice*, Report No FCN-00082, DA 03-3018, FCC File No. FCN-NEW-20030922-00017 (rel. Oct 2, 2003), *Public Notice*, Report No FCN-00081, DA 03-2863, FCC File No FCN-NEW-20030814-00015 (rel Sept. 10, 2003); *Public Notice*, Report No. FCN-00078, DA 03-2282, FCC File No FCN-NEW-20030625-00010 (rel July 11, 2003); *Public Notice*, Report No FCN-00074, DA 03-136, FCC File No. FCN-NEW-20030106-00002 (rel. Jan 16, 2003), *Public Notice*, Report No. FCN-00072, DA 02-3301, FCC File No FCN-NEW-20021114-00053 (rel Nov 27, 2002)

[14] Proximus, an affiliate of SBC, is entitled to a presumption of non-dominance because it has less than a 50 percent market share in the local access and international transport markets in Belgium Consequently, Proximus is not a foreign carrier presumed to possess market power *See Public Notice*, "The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets," DA 03-1812 (rel June 5, 2003) Cingular will nonetheless comply with the Commission's dominant carrier regulations for the U S -Belgium route due to its affiliation with Belgacom to the extent it serves this route through facilities-based services or by reselling the international switched services of an affiliated U S facilities-based.

[15] *See* 47 C F R §§ 43 61(c), 63 10(a)(4)

[16] *See* 47 C F R §§ 43 61(c), 63 10

In accordance with Section 63 18(k)(1) of the Commission's rules, 47 C.F R § 63.18(k)(1), Cingular certifies that all of the countries listed in response to Section 63 18(j) are WTO Member countries [17]

(n) Concessions

Cingular certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) Federal Benefits

Cingular certifies pursuant to Sections 1.2001-1 2003 of the Commission's rules, 47 C F R §§ 1 2001-1 2003, that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862

(p) Streamlined Processing

The parties do not request streamlined processing

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[17] *See* WTO Members and Observers List at http //www wto org/english/thewto_e/whatis_e/tif_e/org6_e.htm, *Cable & Wireless USA, Inc , Order, Authorization and Certificate*, 15 F C C R 3050, 3052 (TD/IB 2000) (finding that U K WTO commitments extend to British overseas territories such as Bermuda and the Cayman Islands); *see also* Schedule of Specific Commitments, The Kingdom of the Netherlands with Respect to the Netherlands Antilles, GATS/SC/3, WTO Doc 94-1002 (Apr 15, 1994) (finding that as part of the Kingdom of the Netherlands, the Netherlands Antilles is a WTO Member), France in Respect to New Caledonia – Schedule of Specific Commitments, GATS/SC/61, WTO Doc 94-1058 (Apr. 15, 1994) (finding that France's overseas departments such as the French West Indies islands are subject to the WTO commitments of France)

III. CONCLUSION

For the foregoing reasons, the parties request that the Commission authorize the transfer of control from AWS to Cingular as described herein

Respectfully submitted,

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Dated March 18, 2004

ATTACHMENT 1

TABLE OF CONTENTS

DESCRIPTION OF TRANSACTION, PUBLIC INTEREST STATEMENT, AND WAIVER REQUEST

This application seeks approval by the Federal Communications Commission ("FCC" or the "Commission") for the transfer of control of AT&T Wireless Services, Inc. ("AWS") and its subsidiaries, along with its interests in affiliates and other entities in which AWS holds substantial interests, to Cingular Wireless Corporation ("Cingular"). The combination of Cingular and AWS will significantly improve the quality of existing voice services and allow the deployment of advanced services much more expeditiously than would be possible on a stand-alone basis.

SUMMARY

The public interest benefits of the transaction are straightforward and compelling. The combined company will be able to deliver the following benefits faster and more broadly than either company could on a stand alone basis:

- Significantly improve the quality of existing voice and basic data services;
- Acquire the spectrum necessary to deploy advanced, third generation ("3G") services on a national scale and without customer disruption;
- Create more value for consumers and a more viable nationwide competitor by substantially expanding the coverage of each of the companies;
- Achieve economies of scope and scale that will enhance the ability of the combined company to compete more effectively in the nationwide mobile telephony market; and
- Improve homeland security by strengthening the resiliency and survivability of Cingular's network.

Since the inception of cellular service in the early 1980s, the domestic market for mobile voice services has experienced a constant and dramatic evolution. The industry began on a purely local market basis characterized by high equipment prices, small local calling scopes (rarely exceeding a metropolitan area), high local per minute rates, separate long distance charges for calls terminated outside the small "home" calling areas, and prohibitive roaming rates often exceeding $2.00 per minute.[1]

The mobile telephony market initially consisted of two cellular carriers operating within distinct areas – either Metropolitan Statistical Areas ("MSAs") or Rural Service Areas ("RSAs"). It was not unusual for adjacent markets to be served by completely different licensees.

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[1] Consumers often had problems while roaming. If their home carrier did not have an automatic roaming agreement with one of the carriers serving the area, the caller had to establish an independent contractual relationship – manual roaming – with one of the carriers. Moreover, although customers could place calls while roaming outside of their home market, they were unable to receive calls.

Moreover, because the MSAs and RSAs often were operated independently, the coverage of the individual systems frequently did not abut, causing substantial gaps in coverage.

Cellular service during this early period was provided almost exclusively to bulky units permanently installed in cars. Although "handheld" units became available shortly thereafter, they were very large and bulky. These units were "affectionately" referred to as "bricks" and had a very short battery life.

Today's wireless telephony market stands in stark contrast to the early days of the industry. Handsets today are so small that they can fit in a person's pocket and often weigh less than 3 ounces. Advances in technology also have improved battery life significantly; many phones now have batteries that last ten days or more.

As advances in technology permitted greater mobility, consumers began demanding anytime, anywhere communication. They quickly became dissatisfied with costly roaming charges and confusion surrounding small "home" calling areas. Carriers thus began consolidating calling areas into larger home areas and roaming charges were greatly reduced. Calling areas now encompass the entire nation and, in most cases, the smallest calling area is statewide.

In addition, as local calling scopes expanded, the concept of long distance calling became less and less prevalent. First, as the calling scope expanded, by definition certain calls that before had originated in a home area and terminated outside that area, and therefore were subject to long distance charges on top of the per minute rate, now terminated within the local home area and no separate long distance charges were assessed. The long distance call was now local. Second, as indicated above and described in Section III.C. below, calling areas now encompass the entire nation and regional calling areas typically cover multiple states. With many of these national rate plans, customers do not incur separate long distance or roaming charges for calls to or from anywhere in the nation.

Wireless networks are no longer a patchwork of disjointed systems. Instead, as the Commission recognized in its *Eighth Annual CMRS Competition Report*, there are six national or near-national networks providing numerous voice and data services in an intensely competitive national market along with numerous other regional and niche competitors. Rate plans consist of low monthly rates that include hundreds, and often thousands, of minutes that can be used without additional charges. Additional minutes are available for a fraction of the price charged in the 1980s and 1990s.

One of the essential characteristics of a national rate plan is that it is offered at a single price for a given package. Carriers price their national plans uniformly across the nation. That is, a Cingular customer buying a 600-minute national plan will pay the same price whether she is located in Washington, D.C., San Francisco or a rural community. The same is true for virtually every competitor. Where products are offered nationwide at a uniform price, the market is necessarily national

Just as customer demands triggered an evolution of handsets from bricks to 3 ounce phones and home calling areas from small areas to the entire nation, customers have spurred carriers to expand beyond voice services. Wireless phones are no longer used just for talking. Basic data services – such as short messaging services and slow, non-graphic intensive Internet

access – have been available for a few years and demand for faster, more complex applications is skyrocketing.

This data evolution, coupled with the voracious increase in the number of voice minutes, has had a profound impact on wireless networks. Usage, whether measured by voice minutes of use ("MOUs") or data bits, has reached previously unforeseen levels. Capital expenditures by all wireless carriers have exceeded $100 billion in an attempt to keep pace with demand. Cingular and AWS are particularly challenged due to technical limitations and the cellular analog capability requirement. Both companies provide service utilizing three distinct networks using three distinct technologies. Where the companies offer cellular service, they are required to operate an analog network. To meet consumer demands, however, the companies also offer digital service. TDMA was deployed initially, but ultimately GSM technology was required to allow the companies to transition to a third generation ("3G") technology capable of meeting customer demands for high speed data. Thus, Cingular and AWS operate three networks in many areas: analog, TDMA, and GSM.

Although GSM bridges the gap between TDMA and 3G, the companies must deploy a 3G technology to offer new advanced, high-speed data services demanded by consumers – the same types of services that are currently available in Europe, Japan, and Korea. These new offerings will require the creation of yet a fourth network – UMTS – utilizing W-CDMA technology. Neither company has the spectrum necessary, however, to deploy a fourth network widely. By combining, the new company will have sufficient spectrum, scale, and scope to deploy the necessary fourth technology capable of supplying high-speed data services. The merger thus will allow the combined company to roll-out 3G services faster and more broadly than either company could alone. Moreover, by combining spectrum and network assets, the new company can offer higher quality service and achieve dramatic efficiencies not otherwise available to Cingular or AWS individually. These efficiencies will allow the company to offer service with better voice and data quality, fewer dropped calls, and lower blocking rates.

In addition to these pro-consumer benefits, this transaction will produce a number of homeland security and public safety benefits. It will improve homeland security by facilitating a faster, more widespread deployment of Wireless Priority Service ("WPS"). Instead of deploying a WPS solution on two networks, both with coverage gaps, WPS can be rolled out on a single network with greater coverage and capacity. The additional capacity will play a critical role in emergency situations when wireless networks experience extreme congestion. In areas where both companies hold licenses, additional capacity will be available to increase the ability for NS/EP personnel to complete a call. Similarly, the additional capacity will decrease the potential for calls initiated by the general public to be blocked during an emergency.

Because the merger involves the combination of existing networks, the likelihood for diversified routing, greater redundancy and increased reliability in both the signaling and data networks will increase dramatically. This will improve the ability of Cingular's wireless network to function if certain assets are destroyed or damaged in an emergency. Approval of the transfer applications also will benefit public safety because the additional spectrum available to the combined company will allow it added flexibility in responding to interference issues.

These consumer benefits cannot be realized quickly by acquiring spectrum in a piecemeal fashion. In this fast-moving, ultra-competitive industry, time is of the essence in responding to consumer demands. Without network assets and infrastructure to put spectrum to immediate use,

improvements in coverage, capacity, and quality will be delayed substantially. Thus, Cingular must acquire both spectrum *and* infrastructure. In heavily populated urban areas with high demand, for example, it is becoming increasingly difficult to improve quality by splitting existing cells. To split cells, a company must find a tower location with the right coverage and then address zoning, environmental, and political issues concerning the tower. This is both time-consuming and costly.

Importantly, all of the aforementioned benefits will be achieved through the merger without any adverse impact on competition. The intense, fierce, and ultra-competitive state of the industry[2] will remain unchanged. If anything, the merger will spur Cingular and its many competitors to differentiate themselves in terms of service quality, new products, prices, coverage, and other characteristics.

In order to demonstrate that the proposed merger will have substantial public interest benefits, Cingular has included four declarations.[3] Professor Richard Gilbert of the University of California, former Deputy Assistant Attorney General for Economics in the Antitrust Division of the U.S., analyzes the relevant geographic and product markets and evaluates the national scope of the wireless market. William Hogg, Cingular's Vice President, Network Strategic Planning, and Dr. Mark Austin, a Cingular radio technology and communications manager, analyze spectrum, capacity, and technical efficiency issues. Mark P. Lefar, Cingular's Chief Marketing Officer, describes the impact of the transaction from a consumer marketing perspective. Stephen A. McGaw, Cingular's Senior Vice President of Corporate Development, describes the pro-consumer and pro-competitive synergies that will result from the transaction.

In further support of the aforementioned public interest benefits, AWS has provided declarations from G. Michael Sievert, Chief Marketing Officer and Executive Vice President of AWS and Greg Slemons, Executive Vice President of Wireless Network Services of AWS.[4] These declarations describe the technical and marketing benefits associated with the merger and how a combination of the two companies will benefit consumers.

Also included herein is a request for waiver of the cellular cross-ownership rule.[5] Approval of the transaction would result in Cingular controlling or holding attributable interests

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2 *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Eighth Report*, 18 F.C.C.R. 14783, 14826 (2003) ("*Eighth Annual CMRS Competition Report*").

3 *See* Declaration of Professor Richard Gilbert ("Gilbert Declaration") (Attachment 1); Declaration of William Hogg, Vice President, Network Strategic Planning, Cingular, and Dr. Mark Austin, radio technology and communications manager, Cingular ("Hogg/Austin Declaration") (Attachment 2); Declaration of Steve McGaw, Senior Vice President of Corporate Development, Cingular ("McGaw Declaration") (Attachment 3); and Declaration of Mark P. Lefar, Chief Marketing Officer of Cingular ("Lefar Declaration") (Attachment 4).

4 *See* Declaration of G. Michael Sievert, Chief Marketing Officer and Executive Vice President of AWS ("Sievert Declaration") (Attachment 5); Declaration of Greg Slemons, Executive Vice President of Wireless Network Services of AWS ("Slemons Declaration") (Attachment 6).

5 47 C.F.R § 22.942.

in both cellular licenses in portions of 11 RSAs. Grant of the waiver would not adversely affect competition because multiple competitors will remain in each area after the transaction is consummated. Moreover, a waiver grant would allow the combined company to substantially improve service to these rural areas. Thus, the public interest would be served.

I. BACKGROUND

A. Description of the Parties

1. Cingular

Cingular is eminently qualified to control the instant licenses. The company was formed in 2000 to provide consumers with another option for nationwide wireless service. Through various subsidiaries and affiliates, Cingular constructs, operates and holds interests in numerous wireless telecommunications systems throughout much of the United States. The company is led by a management team with decades of collective experience in the telecommunications industry. An FCC Form 602 providing the ownership information for Cingular as it would appear upon consummation is on file with the Commission.

The Commission recently reviewed the qualifications of Cingular's wholly-owned subsidiary, Cingular Wireless LLC, and determined that the company has all the requisite character and other qualifications to hold FCC licenses.[6] The Commission specifically recognized that "Cingular has the requisite character qualifications to acquire the Designated Licenses" and it "has found Cingular to be qualified to acquire licenses numerous times. . . ."[7] Cingular is legally, technically, and financially qualified with regard to the instant transfer of control applications.

2. AWS

AWS is equally qualified. AWS, through various subsidiaries and affiliates, constructs, operates and holds interests in numerous wireless telecommunications systems throughout much of the United States and in foreign countries. An FCC Form 602 providing current ownership information for AWS is currently on file with the Commission. The Wireless Telecommunications Bureau has observed that the qualifications of AWS to hold licenses have been "regularly reviewed and approved."[8]

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[6] *See Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC,* WT Docket No. 03-217, *Memorandum Opinion and Order*, FCC 04-26, at ¶ 28 (rel. Feb. 12, 2004) ("*Cingular/NextWave*").

[7] *Id* (citing numerous instances where Cingular has been found qualified to acquire licenses).

[8] *See American Cellular Corporation and Joint Venture Between Dobson Communications Corporation and AT&T Wireless Services, Inc., Seek FCC Consent to Transfer Control of Wireless Licenses; Pleading Cycle Established, Public Notice*, 14 F.C.C.R. 19356, 19356 (WTB 1999).

B. Description of the Transaction

Cingular seeks Commission approval of transfer applications that would allow AWS to become an indirect wholly-owned subsidiary of Cingular. At the time of the merger, each share of stock of AWS will be converted into a right to receive cash (either pursuant to the merger or through the Delaware appraisal proceeding) and then cancelled.[9]

Given the structure of the transaction, there will be no adverse impact on AWS subscribers. These subscribers entered into contracts with AWS and that relationship will continue unchanged. AWS will continue in existence, but as an indirect wholly-owned subsidiary of Cingular. Thus, there is no need to "transition" customers to Cingular.

C. Standard of Review

Under Sections 310(d) and 214 of the Communications Act of 1934, as amended, the subject licenses may not be transferred unless the Commission finds "that the public interest, convenience and necessity will be served thereby."[10] The scope of review is as follows:

> Any [transfer] application shall be disposed of as if the proposed transferee . . . were making an application under Section 308 for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer . . . of the permit or license to a person other than the proposed transferee.[11]

As a threshold matter, in evaluating transfer applications under Section 310(d), the Commission normally reviews whether the transferor and transferee are qualified to hold Commission licenses. As noted above, the Commission repeatedly has affirmed the qualifications of each Applicant.

The public interest analysis involves a review of the benefits of the transaction. It incorporates an analysis of whether the proposed transaction presents any significant anticompetitive issues and, if so, whether there are countervailing pro-competitive effects or other public interest benefits.[12] This determination requires both an evaluation of competitive

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9 As a result, DoCoMo's ownership interest in AWS will be extinguished.

10 47 U.S.C. § 310(d).

11 *Id.*

12 *See, e.g., Global Crossing Ltd. (Debtor-in-Possession), Transferor, and GC Acquisition Limited, Transferee, Applications for Consent to Transfer Control of Submarine Cable Landing Licenses, International and Domestic Section 214 Authorizations, and Common Carrier and Non-Common Carrier Radio Licenses, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, Order and Authorization*, 18 F.C.C.R. 20301, 20315-16 (IB, WTB, WCB 2003) ("*Global Crossing Order*"); *Applications of Voicestream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, 16 F.C.C.R. 9779, 9789 (2001) ("*VSTR/DT Order*"); *AT&T Corp., British Telecommunications, plc, VLT Co LLC, Violet License Co LLC, and TNV (Bahamas) Limited,* (continued)

effects and a broader public policy analysis.[13] The Commission also "must determine whether the transaction violates [FCC] rules, or would otherwise frustrate implementation or enforcement of the Communications Act and federal communications policy."[14]

II. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST

Commission approval of the transfer of control applications will promote the public interest. In the current wireless marketplace, consumers demand: (1) high quality voice transmission (few dropped calls and high grade audio); (2) advanced high-speed data applications; and (3) nationwide coverage (*i.e.*, few coverage gaps and no roaming charges).[15] The merger would permit the combined company to satisfy these customer needs more quickly than either company alone.

- First, because the transaction increases network capacity and provides the spectrum and compatible network resources to fill in the coverage holes of both companies, consumers will enjoy significant near-term improvements in service quality.
- Second, the merger will alleviate spectrum capacity constraints that currently hinder the growth of Cingular and AWS, as well as their ability to provide 3G services. The combined company will be able to deploy 3G service in more areas, including rural areas, and with less disruption than either company could do on its own.
- Third, approval of the transaction will expand significantly the facilities-based footprint of Cingular to reach 97 of the top 100 metropolitan areas.
- Fourth, the merger will create economies of scale and scope that will make Cingular a more effective competitor.
- Finally, the transaction will improve homeland security and public safety.

Absent the merger, these benefits cannot be achieved without substantial delay, if at all.

(footnote continued)
Applications for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc, Memorandum Opinion and Order, 14 F.C.C.R. 19140, 19147 (1999) ("*AT&T/BT Order*"); *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee, Order and Authorization*, 16 F.C.C.R. 20469, 20473 (IB 2001).

13 *Global Crossing Order*, 18 F.C.C.R. at 20315; 47 U.S.C. § 157(a).

14 *General Motors Corporation and Hughes Electronics Corporation, Transferors and the News Corporation Limited, Transferee, for Authority to Transfer Control, MB Docket No. 03-124, Memorandum Opinion and Order*, FCC 03-330 (rel. Jan. 14, 2004).

15 Lefar Declaration at 2.

A. The Transaction Will Result in Service Quality Improvements for Consumers

The ability of Cingular and AWS to improve quality, offer new services, and deploy new technologies has been hampered by the amount of spectrum each holds. Both Cingular and AWS operate cellular and PCS systems and, consistent with the Commission's rules, their cellular systems must provide analog service.[16] As demand for wireless service increased, the original cellular carriers were forced to deploy next generation digital technologies that would increase capacity. The predecessors of Cingular and AWS were among the first to deploy second generation ("2G") digital technologies.[17] At that time, TDMA was the most viable 2G option – GSM was not available in the U.S. on 850 MHz cellular frequencies and CDMA was unavailable for commercial deployment.[18]

In the 1990s, consumers began demanding new applications from cellular carriers. These applications – like text messaging and elementary (non-graphics intensive) web browsing – created bandwidth demands that could not be satisfied with TDMA technology without compromising the quality and capacity available for traditional voice services. To accommodate the anticipated demand for traditional wireless telephony and new data services, Cingular and AWS evaluated next generation technologies. Unfortunately, TDMA offered no realistic migration path to third generation ("3G") technology.[19] Thus, carriers like Cingular and AWS had to develop a transition to a brand-new 3G technology. The transition required each company to deploy a third separate network as an overlay.[20]

For a variety of reasons, both AWS and Cingular selected the GSM standard for this overlay. GSM has the benefit of being the global standard for interconnected mobile voice services and offers a simple migration path for meeting the demand for new services during the conversion to a true 3G network. This transition plan enabled Cingular and AWS to meet demand for new medium-speed data services by deploying the General Packet Radio Services ("GPRS") 2.5G technology, followed by the deployment of Enhanced Data Rates for GSM Evolution ("EDGE") as an initial 3G ("3G Light") technology.[21] These technologies permit the transmission of data at rates up to 115 kbps for GPRS and up to 470 kbps for EDGE.[22] Neither technology was a viable option for TDMA networks.[23]

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16 The Commission's rules require that analog service remain available on these systems until February 18, 2008. *See* 47 C.F.R. § 22.901(b).

17 Hogg/Austin Declaration at 3.

18 *Id.*

19 *See id.* at 4-5.

20 *Id.* at 4-7.

21 *Id.* at 5-7.

22 *Id.* at 5; *see Eighth Annual CMRS Competition Report*, 18 F.C.C.R. at 14804.

23 As discussed in the Hogg/Austin Declaration: "EDGE was originally seen as the evolutionary path to 3G for TDMA networks, but EDGE was more closely related to GSM. Given the relatively low global penetration of TDMA compared to GSM and CDMA, vendors' concentrated their development efforts on GSM 3G migration as compared to TDMA 3G migration, and TDMA development efforts ultimately, faltered completely. Moreover, the (continued)

By deploying a GSM overlay, however, Cingular and AWS have been forced to divide their spectrum in order to effectively run three separate networks in many areas – analog, TDMA, and GSM networks.[24] Both companies also use spectrum from two frequency bands – 850 MHz (cellular) and 1900 MHz (PCS) – which adds further complexity. Thus, only a portion of each carrier's spectrum is available for calls made by phones utilizing each of these distinct technologies. Other national carriers such as Sprint and T-Mobile do not face this problem because they do not have to comply with an analog service requirement and they only have to support a single 2G technology.[25]

In urban areas where Cingular provides cellular service, a typical system currently uses about 4 MHz (six voice channels per site in a 4-cell reuse pattern) to comply with analog service requirement and about 11 MHz (including a guardband between TDMA and GSM) to provide TDMA service, leaving about 10 MHz for Cingular's provision of GSM service, including GPRS/EDGE.[26] Thus, Cingular only has a limited ability to improve quality without degrading some other aspect of its network operation.[27] AWS faces similar constraints.[28]

Cingular already has taken a step forward in addressing its geographic and spectrum limitations by acquiring spectrum from NextWave. Even when the NextWave transaction closes,[29] however, Cingular will hold 25 MHz or less of spectrum in a majority of the top 50 MSAs, including some where it will have no spectrum at all.[30] In addition, even with the acquisition of NextWave spectrum in markets where Cingular does not operate a 1900 MHz system, Cingular would face an extended process of finding new sites and constructing a new

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(footnote continued)
substantial delay before EDGE services would be available meant that there would be a considerable time before TDMA-based networks would be able to offer data communications at the necessary increased speed levels. Given the expected demand for increasingly fast data services, the vendors' inability to deliver TDMA-based 3G services was one of the factors that led them to discontinue efforts to develop TDMA-based 3G services and capabilities." Hogg/Austin Declaration at 5.

24 Although Cingular expects to complete its roll-out of GSM services this summer, it still must maintain a TDMA network for its TDMA subscribers for the foreseeable future, and the Commission's rules require Cingular to continue providing analog service until February 18, 2008. *See* 47 C.F.R. § 22.901(b).

25 The analog service requirement contained in Section 22.901(b) of the Commission's rules only applies to *cellular* systems (*i.e.*, those operating at 850 MHz), and neither T-Mobile nor Sprint holds such licenses. Although Verizon is subject to this requirement in some markets, it does not have to maintain multiple digital networks, because it uses only CDMA as its 2G technology. *See* Hogg/Austin Declaration at 3, 25-26.

26 *Id.* at 7-8. The precise allocation of spectrum varies from area to area. *Id.*

27 *Id.* at 7, 12-13. When designing or modifying a system, capacity, quality, and coverage are interdependent – if capacity is increased without adding spectrum, quality and coverage are detrimentally affected. *Id* at 13.

28 *See* Slemons Declaration at 1-3; *see also* Hogg/Austin Declaration at 12-13.

29 *See generally Cingular/NextWave.*

30 Hogg/Austin Declaration at 7.

network. This time to market will be substantially shortened by the combination of spectrum and network assets held by Cingular and AWS.

Cingular has struggled to keep up with the other nationwide and near national CMRS carriers. In addition to lagging behind Verizon and Nextel in terms of coverage footprint, Cingular ranked third in a J.D. Power survey regarding network quality.[31] Consumer Reports noted that "Cingular and AT&T subscribers suffer from overloaded circuits in several major cities."[32] Without additional spectrum and infrastructure, both companies would find it challenging to provide customers with the quality and advanced services they desire. The merger will allow Cingular to address these issues far more expeditiously than it could on a stand-alone basis.

With the additional spectrum involved in this transaction, network capacity, quality, and coverage can all be improved.[33] Indeed, improvements often will be disproportionately advantageous in comparison to the spectrum added. For example, trunking communication channels together leads to a nonlinear increase in capacity and improvement in service quality. Two channels trunked together can provide 0.223 Erlangs[34] of capacity at 2% blocking, while four channels trunked together can provide 1.09 Erlangs of capacity at the same blocking rate, which is more than double the capacity of two two-channel blocks, an increase in efficiency (*i.e.*, Erlangs per channel) from 11% to 27%.[35] This is true because the caller is more likely to find a vacant channel when a larger number of channels are pooled together in a trunk group.

Trunking efficiencies also will produce a significant improvement in service quality. As noted in the Hogg/Austin Declaration:

> a typical cell site in an urban area will have about 40 trunked channels per sector, with a capacity of 31 Erlangs at 2% blocking. If Cingular and AWS have sites that can be combined and operated as a single 80-channel trunk group instead of two 40-channel trunk groups, there would be an increase in total capacity from 62 Erlangs to 68.7 Erlangs at 2% blocking. As a result, if at a given

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31 *See* Peter Valdes-Dapena, *How's Your Cell Service Rate?*, CNN/MONEY, July 31, 2003, *at* http://money.cnn.com/2003/07/31/technology/cellular_survey.

32 *Cingular Priority. Improving Customer Satisfaction*, ASSOCIATED PRESS, Feb. 19, 2004 (citing Feb. Consumer Reports survey).

33 Hogg/Austin Declaration at 14-15.

34 "Communications traffic is often measured in Erlangs, representing call-hours during a given period, typically the busiest hour of the day. A single call 60 minutes long, 20 three-minute calls, and assorted calls of varying length totaling 60 minutes, would each represent one Erlang of traffic." *Id.* at 14 n.14.

35 *See id.* at 14. The illustrative computations above use the Erlang B formula for calculating the effects of trunking, premised on unsuccessful call attempts being blocked on the first try. Under this formula, an increase in number of channels produces a greater than proportional increase in capacity at the same blocking rate, or a greater than proportional decrease in blocking rate for the same number of call attempts, in both cases reflecting an increase in efficiency. *Id.* at 14 n.15.

> site and sector AWS and Cingular each had 40 voice channels deployed at the site and serve the same number of subscribers at the same quality level, the combination of their 80 channels into a single trunk group will provide a 10.8% increase in capacity for serving new traffic at the same quality level as before. Until that traffic is added, the increased efficiency would serve the same level of traffic at an even higher quality level (lower rates of blocked and dropped calls). Alternatively, the efficiency gain could be used to reduce the number of channels needed to accommodate the combined traffic. In the example, the total number of voice channels could be reduced from 80 (in two separate trunk groups) to 73 (in a combined system) to serve the combined customer base with no reduction of the existing quality level, thereby recovering 7 channels for alternative uses, *e.g.*, GSM.[36]

As a result, consumers will quickly experience improved service quality, such as a reduction in blocking and dropped calls during peak call hours.[37] The combined networks of the two companies also will close dead spots within many cities and coverage gaps in many rural areas, which will provide more seamless calling with higher quality.[38] By combining the two networks, Cingular will be able to address quality concerns by improving capacity and enhancing coverage in problematic areas. "Significantly increased spectrum and more sites means clear calls, fewer dropped calls and broader availability of coverage."[39]

Dropped calls are an important factor in customers' perception of service quality and the merger will give the combined company the capability to better serve customers through improvements in service quality.[40] If the systems being combined in a given area are equally loaded, dropped calls could be reduced by up to 20%, but if one system is more highly loaded than the other, customers of the system with higher usage would see an improvement of up to 40% in dropped calls without any decrease in service quality received by customers of the less congested system.[41] The attached Hogg/Austin Declaration demonstrates the service improvements in detail.[42] For example, they include graphs demonstrating[43] – based on actual market data – that when the two systems are combined, blocked and dropped call rates will improve, in some cases dramatically. As the graphs (reproduced below) show, combining

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36 *Id* at 15 (footnotes omitted).

37 *See id.* at 15-18; McGaw Declaration at 6.

38 Hogg/Austin Declaration at 22-25; *see* McGaw Declaration at 5; Sievert Declaration at 3.

39 Jane Spencer and Andrea Petersen, *AT&T-Cingular Merger to Affect One in Three Wireless Users; Sprint Counters With New Plan*, WALL ST. J., Feb. 18, 2004, at D1 (Quoting Marc Lefar, Cingular's Chief Marketing Officer); *see* Hogg/Austin Declaration at 13-18.

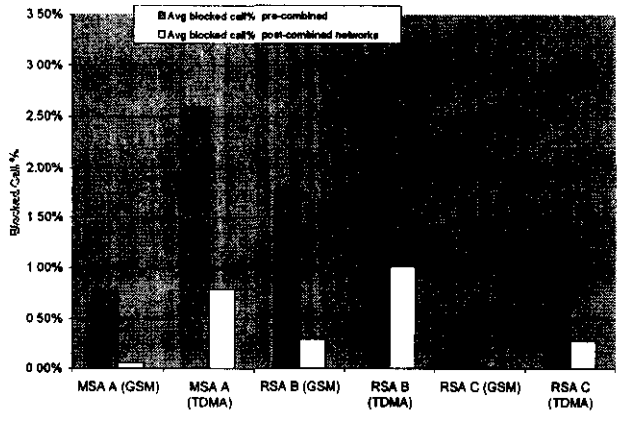
40 Hogg/Austin Declaration at 16 & n.18.

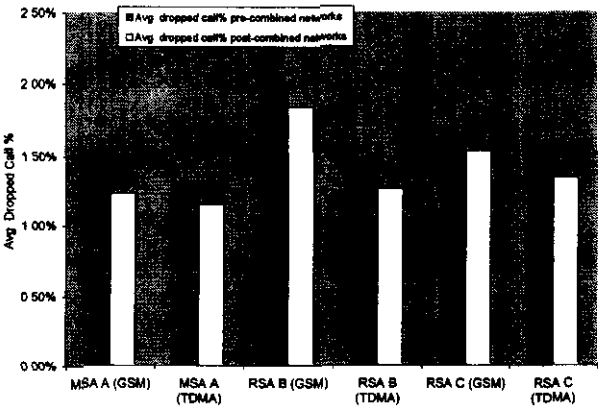
41 *Id* at 16 & Appendix 4.

42 *See id.* at 15-19.

43 *Id* at 17, Figures 4-5.

systems can reduce the percentage of blocked calls well below the pre-merger level. The percentage of dropped calls is reduced as well:





Mr. Hogg and Dr. Austin demonstrate that in one of the metropolitan areas currently served by both companies, the trunking efficiencies resulting from combining two identical systems could result in a reduction in blocked calls by more than 180,000 calls per day or, put another way, about 66,000,000 calls annually.[44] The improvements in blocking also would be felt in rural areas In one RSA evaluated, the TDMA blocking rate was reduced from 3% to 1% which, in turn, eliminated blocking for some 10,000 calls per day — over 3,000,000 calls in the space of a year.[45] While these figures are based on certain assumptions, they indicate the order of magnitude of the consumer benefits of the merger, which will occur not just in a few special cases but will generally occur wherever Cingular and AWS networks are combined.[46] "Nationwide, hundreds of millions of calls would be favorably affected per year."[47]

Absent the merger, the ability of either Cingular or AWS to improve quality and roll out new services is limited. In both urban and rural areas, for example, it is becoming increasingly difficult to improve quality by splitting existing cells, because there are limits on how many towers can be built.[48] To split cells, a company must find a tower location with the right coverage and then address zoning, environmental, and political issues merely to have the right to build the tower.[49] This is both time-consuming and costly; as a result cell-splitting has only limited utility in improving coverage, quality, and capacity in mature networks.[50]

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44 *Id.* at 18.

45 *Id.*

46 *Id*

47 *Id.*

48 *Id.* at 21 n.25, 23 n.28; *see* McGaw Declaration at 7.

49 *See* Hogg/Austin Declaration at 21 n.25, 23 n.28; McGaw Declaration at 7.

50 *See* Hogg/Austin Declaration at 21 n.25, 23 n.28. In addition to minimizing the need for cell splitting and new towers due where AWS networks have complementary sites, the merger invariably will result in an elimination of redundant sites where additional capacity is not necessary. Thus, the combined company will retain the sites that provide the best and most efficient coverage and free up space on the other towers for third party collocation. *See id.* at 24-25

In addition to the benefits derived from the availability of more spectrum, the merger will expand the size of Cingular's footprint and reduce its reliance on roaming networks which has prevented the company from exploiting fully the technological enhancements available over its new GSM networks.[51] New features and services – such as mobile-to-mobile calling and push-to-talk capabilities – are not as attractive to consumers based on Cingular's current footprint as they would be if available more broadly.[52] The combination of AWS and Cingular will allow the availability of these services on a seamless, nationwide basis far more promptly than can otherwise be achieved, if they could be achieved at all, by the companies individually.

In many rural areas where one company provides cellular service and the other provides PCS, customers will experience improvements in service quality. Cellular signals at 850 MHz typically have coverage that extends further from population centers and highways than 1900 MHz PCS systems.[53] Thus, 1900 MHz subscribers with dual-band phones will be able to place calls on their "home" network in areas where they previously would have roamed.[54] Consequently, these subscribers will be able to receive all of the features associated with a home system rather than the more limited menu of features available while roaming.[55]

B. The Proposed Merger Will Further the Public Interest by Alleviating Spectrum Constraints Currently Precluding the Rapid Deployment of Advanced Services

Consumer demand for new, high speed/bandwidth, advanced services is growing tremendously. Growth rates for data services dwarf the growth of wireless voice services.[56] Cell phones are no longer used just for talking. The growth rate of 2G and 2.5G data services offered on Cingular's networks, such as interactive messaging and multimedia messaging, confirms this trend. As an illustration, the number of multimedia messages per day has increased by over 700 percent in the last six months, as shown in the following graph:

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51 Lefar Declaration at 9; *see* Dan Meyer, *Cingular Continues to Hunt for Nationwide Presence*, RCR WIRELESS NEWS, Apr. 7, 2003 ("*Cingular Continues to Hunt for Nationwide Presence*").

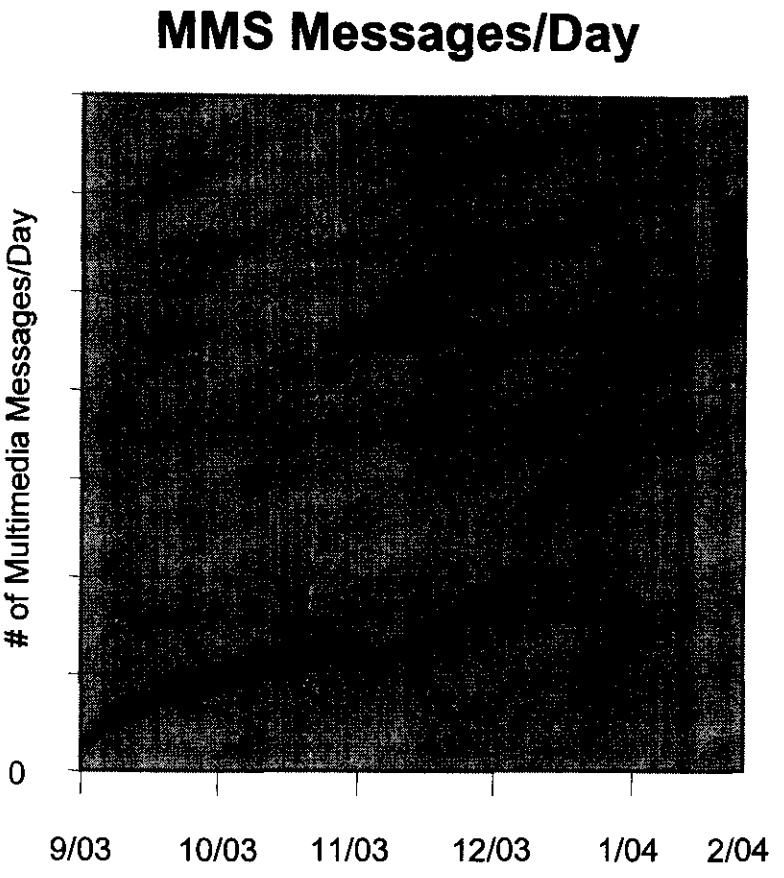
52 *See* Lefar Declaration at 10.

53 *See* Hogg/Austin Declaration at 23-24. The complementary nature of the two systems is depicted in the attached coverage maps. *See* Attachment 7.

54 *See* Hogg/Austin Declaration at 24; Slemons Declaration at 2; *see* Sievert Declaration at 4.

55 Hogg/Austin Declaration at 24; *see* Lefar Declaration at 9.

56 Lefar Declaration at 2-3; *see* Sievert at 1-2. As discussed below, Cingular's data traffic is increasing exponentially. Other countries where advanced services have been deployed show similar growth. In South Korea, for example, data accounts for 14 percent of cell phone company revenue. *See also* Yuki Noguchi and Griff Witte, *Wireless Firms Look at Phones as Limitless*, THE WASHINGTON POST, Feb. 19, 2004, at E1 ("*Wireless Firms Look at Phones as Limitless*").



These trends presage the growth rates expected when higher-speed 3G services are offered.

As one analyst noted:

> The market has moved from a regulatory driven phase where availability, pricing and services were largely defined by regulatory decisions. The next period was a marketing phase driven by price plans, acquisition and retention programs, channel activities and advertising. Finally, the market now is entering a technology driven phase where the availability of mobile data (e-mail, Internet access), base stations and mobile computing will shape the market. The move to 3G service will further continue this trend.[57]

In Europe, cell phones are used to transact business, much like an ATM card.[58] In Japan, cell phones are used as portable televisions.[59] U.S. consumers are now demanding capabilities that require large amounts of bandwidth at high speeds to work properly, such as:[60]

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57 Paul Budde Communication Pty Ltd, *USA – Wireless Communications Market Overview*, 2004, at 7 *available for purchase at* http://www.budde.com.au/Reports/Contents/USA-Wireless-Communications-Market-Overview-1838.html.

58 *See Wireless Firms Look at Phones as Limitless, supra* note 56.

- streaming video;[61]
- high-speed Internet transmission;[62]
- multimedia messaging capabilities;[63]
- the delivery of pictures over cell phones;[64]
- high-end gaming (such as real-time multiplayer games);[65]
- music offerings;[66] and
- location-based services.[67]

Cingular and AWS currently use data transmission technologies such as GPRS and EDGE that are unable to accommodate all of these demands. Competitors have begun deploying other 3G technologies that are capable of satisfying them. For example, Verizon Wireless currently offers the CDMA-based 1xEV-DO "BroadbandAccess" data service in the Washington, D.C. and San Diego, California areas, with a maximum speed of 2.4 Mbps and average end-user speeds of 300-500 kbps, and has announced plans to introduce this service nationally, starting in "many major U.S. cities" this summer.[68] Sprint is moving forward with deployment of an even more advanced service – 1xEV-DV – that also will offer consumers much faster data transmission (3.09 Mbps maximum, 400 kbps to 1 Mbps average) than currently available over either the Cingular or AWS networks.[69] To illustrate the differences in the capabilities of the technologies, a 1 megabyte file would take almost seven minutes to

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(footnote continued)

59 *Id.*

60 Lefar Declaration at 3; *see* Hogg/Austin Declaration at 4, 25; McGaw Declaration at 7. Cingular currently offers camera phones (such as the Motorola V400) and phones integrated with mp3 players (such as the Nokia 3300 Music Phone).

61 Hogg/Austin Declaration at 4, 25; McGaw Declaration at 7.

62 *See* Yuki Noguchi and Griff Witte, *Cingular Wins the Bidding*, THE WASHINGTON POST, Feb. 18, 2004, at E1 ("*Cingular Wins the Bidding*").

63 *See* Hogg/Austin Declaration at 4, 25; McGaw Declaration at 7.

64 *See Cingular Wins the Bidding, supra* note 62.

65 *See* Hogg/Austin Declaration at 4.

66 *See* McGaw Declaration at 7.

67 *See* McGaw Declaration at 7.

68 *See* News Release, Verizon Wireless, *Verizon Wireless Announces Roll Out of National 3G Network,* Jan 8, 2004, *at* http://news.vzw.com/news/2004/01/pr2004-01-07.html.

69 *See Eighth Annual CMRS Competition Report*, 18 F.C.C.R. at 14804; Bob Brewin, *Sprint PCS Signs $1B Cell Network Upgrade Deal with Lucent,* COMPUTERWORLD, July 22, 2003, *available at* http //www.computerworld.com/mobiletopics/mobile/story/0,10801,83320,00.html?f=x68.

download utilizing GPRS versus 1.5 minutes utilizing EDGE and only 20 seconds utilizing 1xEV-DO.[70]

To compete with the new Verizon and Sprint offerings, Cingular and AWS must deploy a technology that permits data transmission at comparable speeds.[71] From a technology standpoint, the logical transition from EDGE is to the Universal Mobile Telecommunications System ("UMTS") which will initially permit data transmission at speeds of up to about 2 Mbps and eventually, when upgraded with High Speed Downlink Packet Access ("HSDPA"), at speeds of up to 10 Mbps.[72]

To deploy UMTS, a carrier must set aside a *minimum* of 10 MHz of dedicated spectrum (5 MHz uplink paired with 5 MHz downlink).[73] Because UMTS requires all customers in a sector to share the download bandwidth, a UMTS base station (prior to the introduction of HSDPA) that is capable of providing 384 kbps download speed to users at the outer boundary of service (up to 2 Mbps to close-in users) will only provide 38.4 kbps to 10 simultaneous users per sector.[74] Thus, additional UMTS channels will be needed to maintain adequate download speed as more subscribers demand access to 3G services.[75]

Because Cingular must continue serving subscribers using two different legacy technologies in addition to GSM/GPRS/EDGE, it will be unable to clear the minimum 10 MHz of spectrum necessary for the initial deployment of UMTS in most of its service area much less the substantially greater spectrum requirements necessary to serve anticipated demand for the high-speed services UMTS supports.[76] Even in the limited areas where Cingular has both a 25 MHz cellular system and a 10 MHz PCS system, there is no room for UMTS because the PCS system is already being used to serve GSM (and in some cases TDMA) subscribers. Thus, the

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[70] *See* Dave Conabree, *Verizon to Unveil Ultra-Fast Wireless,* MOBILEMAG.COM, Mar. 17, 2003, *available at* http://www.mobilemag.com/content/100/104/C1549/; News Release, Verizon Communications, *Verizon Wireless to Offer High-Speed Wireless Broadband Services for Business Customers*, Mar. 17, 2003, *at* http://investor.verizon.com/news/ VZ/2003-03-17_X835726 html.

[71] Verizon currently has no competition for data applications at these very high speeds. According to analyst Jane Zweig, Chief Executive of Shosteck Group, Verizon charges a premium for its advanced data service which would be unavailable if there was more competition. *See* Rob Pegoraro, *Verizon Wireless Lets You Get Online and Get Out – Quickly*, THE WASHINGTON POST, Mar. 14, 2004, at F7.

[72] *See* Hogg/Austin Declaration at 5; UMTS World, WCDMA(UMTS), *at* http://www.umtsworld.com/technology/wcdma.htm (visited Mar. 16, 2004); UMTS World, HSPDA in W-CDMA, *at* http://www.umtsworld.com/technology/hsdpa.htm (visited Mar. 16, 2004).

[73] Hogg/Austin Declaration at 10.

[74] *Id.* Of course, the speed will increase if the 10 users are not continuously using their full share of the bandwidth. For example, 10 users browsing web pages will not all be downloading data or graphics at the same time, so a much larger number of users would be able to browse at high speeds than could download simultaneously.

[75] *Id.* at 11.

[76] *Id* at 7, 11-12.

company has no clear 10 MHz of spectrum. Similarly, in the limited areas where Cingular only operates PCS systems, these systems utilize 20-30 MHz of spectrum to provide GSM/GPRS/EDGE service and do not have 10 MHz of clear spectrum within which to offer UMTS.[77] As a result of these constraints, Cingular alone would be able to introduce UMTS in only 38 metropolitan areas when the acquisition of additional NextWave spectrum is considered and with optimistic assumptions regarding the transition of analog and TDMA subscribers to GSM.[78] AWS suffers from similar constraints.[79]

As demonstrated in detail in the Hogg/Austin Declaration, where both companies have an existing customer base, the combined network will require 80 MHz to provide a full menu of competitive voice and data services. The post-merger company would require approximately 50 MHz of spectrum (assuming both carriers are currently using 25 MHz or more to serve their separate customer bases) to simultaneously serve the combined customer base with analog, TDMA, and GSM/GPRS/EDGE services and allow for anticipated growth in demand for existing services.[80] When the two companies' networks are fully combined and spectrum beyond this 50 MHz can be cleared, Cingular will be able to deploy UMTS in 10 MHz building blocks. Cingular anticipates that three 10 MHz UMTS blocks – for a total of 30 MHz – will be necessary to meet anticipated demand for 3G services.[81] Thus, the combined company will need up to 80 MHz of spectrum to meet the demand for existing voice and data services and meet the anticipated demand for advanced services.[82]

By combining the spectrum assets of both companies, Cingular will have sufficient spectrum to offer at least some UMTS in 75-80 of the top metropolitan areas and in many rural areas.[83] By allowing Cingular to obtain this spectrum, the Commission will create an additional provider of data service with a transmission rate of 2 Mbps or more and pave the way for the deployment of 3G services expeditiously and over a wider footprint.[84] This will increase competition in the provision of 3G services to a level that would not be possible without the merger and will provide consumers with additional choices for high speed connectivity.

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77 *Id.* at 12.

78 *Id.*

79 *See* Slemons Declaration at 2-4.

80 Hogg/Austin Declaration at 20. As discussed in the previous section, Cingular currently needs about 4 MHz to comply with the analog service requirement, about 11 MHz to provide TDMA service, and 10 MHz for Cingular's provision of GSM service, including GPRS/EDGE, to meet the demands of existing customers served via a 25 MHz system in urban areas. *Id.* at 7-8. The precise allocation of spectrum varies from area to area. *Id.*

81 *Id.* at 21.

82 In areas where the combined company would hold an attributable interest in more than 80 MHz throughout a BTA, it will reduce its holdings to no more than 80 MHz. The combined spectrum holdings of AWS and Cingular are provided in Attachment 8.

83 Hogg/Austin Declaration at 22.

84 *See* Press Release, Cingular Wireless, *Cingular To Acquire AT&T Wireless, Create Nation's Premier Carrier,* Feb. 17, 2004, *at* http://www.cingular.com/about/latest_news/04_02_17

C. The Merger Will Benefit Consumers by Making Cingular a Source for Truly Nationwide Coverage

The Commission has determined that the public interest is served by authorizing transactions that enable national CMRS carriers "to expand into new markets, and provide new services to subscribers and increase subscribership in markets in which [they] currently provide[] service."[85] The importance of achieving a nationwide footprint has been stressed by Thomas J. Hazlett, the former FCC Chief Economist:

> Gaining national geographic scope has allowed competing wireless networks to better pursue technological upgrades and to roll out a richer mix of services. The result is that the quality of wireless service has improved markedly with the emergence of wide area networks. . . . The integration of local systems into nationwide networks allowed for economies of scale in developing advanced applications and in deploying new technologies.[86]

Others have recognized that the expansion of Cingular's footprint is essential to its ability to provide nationwide service and to remain competitive with the other nationwide CMRS carriers:

> Analysts note this lack of coverage for Cingular . . . is preventing the carrier from presenting a true nationwide footprint and is hurting the carrier's attempt to compete.
>
> "When a customer walks into a store and sees on a map all the areas Cingular does not provide service, it creates doubt," said Eddie Hold, vice president of telecom services at Current Analysis. "Even if the customer will never travel out of their [sic] home calling area, the lack of a nationwide footprint could drive them away."[87]

Cingular was created in an attempt to provide consumers with another option for nationwide wireless service.[88] Although the company currently provides cellular and PCS service in 43 states[89] and has attributable interests in cellular/PCS licenses in 87 of the top 100

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85 *Applications of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless For Consent to Assignment of Licenses, Memorandum Opinion and Order,* 18 F.C.C.R. 6490, 6494 (2003) ("*Northcoast-VZW Order*"); *see, e.g., Cingular/NextWave* at ¶ 32.

86 *See* Thomas W. Hazlett, *Is Federal Preemption Efficient in Cellular Phone Regulation?*, 56 FED. COMM. L.J. 155, 202 (Dec. 2003).

87 *Cingular Continues Hunt for Nationwide Presence, supra* note 51.

88 *See* McGaw Declaration at 1-2.

89 *See* Cingular Wireless LLC, SEC Form 10-K, 2003 Annual Report at 2, Feb. 25, 2004, *available at* http://www.sec.gov/Archives/edgar/data/1130452/000095014404001647/0000950144-04-001647-index.htm.

metropolitan areas,[90] its competitors have a more expansive footprint. Verizon Wireless already provides service in 97 of the top 100 metropolitan areas,[91] Nextel provides service in all of the top 100 metropolitan areas,[92] and Sprint's footprint encompasses all 50 states.[93] After the transaction is consummated, Cingular's footprint will extend into 6 new states and Cingular will be able to offer service in 97 of the top 100 metropolitan areas.[94] It concurrently will expand its coverage from approximately 220 million licensed POPs to approximately 264 million.[95]

Cingular has entered into 114 roaming agreements to permit its subscribers to utilize their phones in areas unserved by Cingular. Similarly, AWS has entered into nearly 140 roaming agreements. By combining the networks and other infrastructure assets of Cingular and AWS, roaming charges – whether levied on subscribers or absorbed by the companies as part of certain pricing plans – will be eliminated in many areas. For example, AWS subscribers that currently roam in Portland, Oregon, Salt Lake City, Utah, and Tulsa, Oklahoma– three top 100 metropolitan areas – would no longer roam in those areas once the companies are combined. Similarly, Cingular does not provide facilities-based service in several major cities served by AWS, such as Denver, Colorado, Pittsburgh, Pennsylvania, Phoenix, Arizona, and Minneapolis, Minnesota.[96] After the merger, Cingular subscribers would not roam in these areas.

To eliminate coverage gaps quickly and extend its nationwide coverage, Cingular must acquire both spectrum *and* infrastructure.[97] Spectrum alone does not solve the coverage problem.[98] Without network assets and infrastructure to put spectrum to immediate use, improvements in coverage – as well as capacity and quality – will be delayed substantially.[99] By the time infrastructure is deployed, competitors will have expanded their coverage into other

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90 *See* Dan Meyer, *Cingular Banks on AWS with $41B Buy*, RCR WIRELESS NEWS, Feb. 23, 2004; Denise Pappalardo and Jim Duffy, *Cingular, AT&T Face Hurdles*, NETWORK WORLD, Feb. 23, 2004.

91 *See* Verizon Wireless Overview, *at* http://www.verizonwireless.com/b2c/aboutUs/index.jsp.

92 *See* Nextel History: December 2001, Nextel Communications, *at* http://www.nextel.com/about/corporateinfo/ company_history.shtml (noting that Nextel, with Nextel Partners Inc., serves the top 100 MSAs).

93 *See* Corporate Fact Sheet, Sprint Corporation, *at* http://www.sprint.com/sprint/ir/sd/cfs.html.

94 Lefar Declaration at 9. The three metropolitan areas remaining unserved will be Norfolk, Richmond and Newport News.

95 McGaw Declaration at 5.

96 *See* Lefar Declaration at 9. The merger should have little impact on the availability of roaming agreements to other carriers. Permitting the customers of other carriers to roam on the Cingular network produces valuable revenue for Cingular. Thus, with the exception of home roaming – which discourages competitors from building and expanding networks – Cingular will continue to enter into roaming agreements with other carriers.

97 McGaw Declaration at 3-4.

98 *Id.*

99 *Id.* at 3-4, 5, 8, 12-13.

areas and Cingular will remain behind its competition. By acquiring both spectrum and infrastructure, the company can provide expanded coverage to consumers in the near term.[100]

D. The Transaction Will Result in Substantial Economies of Scale and Scope

In addition to improvements in network coverage and service quality, and greater availability of enhanced service offerings, the transaction will result in a number of synergies which will benefit consumers and make the new Cingular a more effective competitor. As a result of the merger, Cingular expects to generate operating and capital expense synergies of more than $1 billion in 2006 and more than $2 billion in subsequent years due to new economies of scale and scope created by the acquisition of AWS.[101] These economies of scale and scope include greater purchasing and billing system efficiencies and reductions in common expenses – such as network expansion expenses and maintenance and administrative costs.[102]

1. Technical and Operational Efficiencies

By combining, the two companies will be able to achieve significant operating synergies by sharing best practices and consolidating networks, distribution, procurement, advertising, and other functions.[103] In areas where the two companies both provide service, they currently operate six networks (and each would require one more for UMTS, for a total of eight) and divide their spectrum accordingly. The combined company would be able to eliminate some redundancy in spectrum usage by consolidating the six current networks into three (analog, TDMA, and GSM/GPRS/EDGE) in any given area and by combining the spectrum into larger trunk groups. This would increase trunking efficiency, dramatically in many instances.[104] The new trunking efficiency will allow Cingular to offer service that is superior in quality to the service available from either company pre-merger, while also accommodating the growth of existing voice and data services for several years.

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100 Cingular and T-Mobile have entered into a limited infrastructure agreement. *See Eighth Annual CMRS Competition Report,* 18 F.C.C.R. at 14808. The merger has no impact on this agreement with T-Mobile. If either party eventually decides to terminate the relationship, there is a substantial transition period imposed by contract to afford the parties time to build infrastructure where they previously did not have such.

101 McGaw Declaration at 9; Andrew Ross Sorkin and Matt Richtel, *$41 Billion Offer by Cingular Wins AT&T Wireless*, N.Y. TIMES, Feb. 18, 2004, at A1. The Commission has recognized that "operators with larger footprints can achieve certain economies of scale and increased efficiencies compared to operators with smaller footprints." *Eighth Annual CMRS Competition Report*, 18 F.C.C.R. at 14805.

102 *See* McGaw Declaration at 9-11; *Eighth Annual CMRS Competition Report*, 18 F.C.C.R at 14805.

103 *See generally* McGaw Declaration at 9-11.

104 For a more detailed explanation of the trunking efficiencies, *see* Hogg/Austin Declaration at 13-19; *see also* McGaw Declaration at 6; Slemons Declaration at 3-4.